

ESTATE PLANNING FOR MARRIED COUPLES IN 2024:

SPOUSAL LIFE ACCESS TRUST (SLAT)

Estate planners have been increasingly recommending the Spousal Life Access Trust, or SLAT, to married clients to help them protect and transfer wealth to the next generation while minimizing the estate taxation associated with the value of the assets transferred to the SLAT. A SLAT is an irrevocable trust in which one spouse transfers assets to the SLAT to benefit the other spouse (and maybe other family members) while removing assets from the estate of the couple that may be subject to estate taxation. Each spouse may create a SLAT for the other as well. The transfer into the SLAT is designed to use the estate and gift tax exemption available of the spouse making the transfer so that any post transfer appreciation of the value of assets will be excluded from the estate of both spouses for federal estate taxation. This is similar to the bypass/credit shelter trust that may be incorporated into the Wills of each spouse that is implemented at the death of a spouse (there is an article discussing the bypass/credit shelter trust in these Hot Topics) except the SLAT is created while the married couple is living.

The SLAT is a planning technique that can allow married couples to make large gifts to reduce the size of their estate subject to estate taxation. The transferring spouse may lose control of the assets transferred to the SLAT, but the receiving spouse who is the beneficiary of the SLAT may receive distributions from the SLAT and with proper drafting, the receiving spouse may even act as trustee of the SLAT. Upon the death of the receiving spouse, the remaining family members may be the beneficiaries of the SLAT.

The key to the SLAT is that assets within the SLAT will grow estate tax free while the married couple is living. If there is concern that the current estate and gift tax exclusion which in 2024 is 13,610,000 per person (or 27,220,000 for a married couple through portability), will be reduced by congress and the president, the SLAT should be considered. Even if the exclusion is not reduced by congress or the president, the current estate tax exclusion is set to be reduced to roughly half of those amounts in 2026.

If the married couple also desires to achieve protection from creditors by implementing the SLAT, this can be achieved but the receiving trustee will not be able to act as a Trustee. Also, distributions to the receiving spouse will be more restrictive. Therefore, an independent trustee should be appointed which of course would cause the married couple to lose control of the SLAT.

There are other factors for a married couple to consider when considering the SLAT and these include the risk of divorce or death of the receiving spouse. With respect to divorce, the SLAT could provide that only a spouse who is currently married to the transferring spouse is the beneficiary. As to the death of the receiving spouse, the assets of the SLAT will be subject to other family members as beneficiaries. So careful consideration of the married couple's assets available to fund the SLAT should be performed.